

AMENDED IN SENATE APRIL 8, 2010

**SENATE BILL**

**No. 1231**

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**Introduced by Senator Corbett  
(Principal coauthor: Senator DeSaulnier)  
(Coauthor: Senator Price)**

February 19, 2010

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An act to amend Section 6108 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1231, as amended, Corbett. Public contracts: state agency: sweatshop labor: slave and sweat free code of conduct.

Existing law requires every contract entered into by a state agency for the procurement of equipment, materials, supplies, apparel, garments, and accessories and the laundering thereof, excluding public works contracts, to require a contractor to certify that no equipment, materials, supplies, apparel, garments, or accessories provided under the contract are produced by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor, or exploitation of children in sweatshop labor. If a contractor knew or should have known the specified products furnished to the state were laundered or produced by the specified types of prohibited labor, the contractor may be removed from the bidder's list for 360 days. Existing law provides for misdemeanor liability in the case of a knowing false certification.

~~Existing~~

*Existing* law requires the Department of Industrial Relations to establish a contractor responsibility program, on or before February 1, 2004, including a ~~Sweatfree~~ *Sweat Free* Code of Conduct. Existing law also requires the appropriate procurement agency, in consultation with

the Director of Industrial Relations, to employ an approach to implement the ~~Sweatfree~~ *Sweat Free* Code of Conduct, as specified. Existing law requires the Department of Industrial Relations to explore mechanisms to ensure that businesses that contract with state agencies are in compliance with this section, ~~as prescribed those provisions.~~

This bill would require every contract entered into by a state agency for the procurement of equipment, materials, supplies, apparel, garments, and accessories and the laundering thereof, including public works contracts, to require a contractor to certify that no equipment, materials, supplies, apparel, garment, or accessories provided under the contract are produced by abusive forms of labor performed by all persons, not only abusive forms of child labor, ~~as prescribed. This bill would require the certification to include all raw materials in the supply chain used to produce or manufacture the goods procured. This bill would only apply to contracts~~ *a contract for building materials for a public works project only if the contract is in excess of \$20,000 in a public works contract, as prescribed. This.*

*The bill would additionally extend the period that the contractor is removed from the bidder's list to 2 years, if the contractor knew or should have known the specified products were laundered or produced by the specified prohibited labor. This bill would rename the ~~Sweatfree~~ *Sweat Free* Code of Conduct to be as the Slave and Sweat Free Code of Conduct and would require the Department of Industrial Relations to establish a contractor responsibility program on or before January 1, 2012, and to maintain on its Internet Web site a link to the United States Department of Labor's List of Goods Produced by Child Labor or Forced Labor. This*

*The bill would delete the requirements that the appropriate agency, with the Director of Industrial Relations, employ an approach to implement the Slave and Sweat Free Code of Conduct, and that the Department of Industrial Relations explore mechanisms to ensure that businesses that contract with state agencies are in compliance with this section. This bill would additionally require contractors whose manufacturing and assembly locations are outside the United States to comply with international laws or treaties binding on their countries. By changing the definition of a crime, this bill would impose a state-mandated local program.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 6108 of the Public Contract Code is amended to read:

6108. (a) (1) Every contract entered into by any state agency for the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies shall require that a contractor certify that no apparel, garments, corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of labor, or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of labor, or exploitation of children in sweatshop labor. ~~For purposes of this subdivision, the certification shall include all raw materials in the supply chain used to produce or manufacture the goods procured~~ *The contract shall require the contractor also to certify that the apparel, garments, corresponding accessories, equipment, materials, or supplies furnished to the state are not items that appear on the United States Department of Labor's List of Goods Produced by Child Labor or Forced Labor as it maybe updated from time to time.* The contractor shall agree to comply with this provision of the contract.

(2) The contract shall specify that the contractor is required to cooperate fully in providing reasonable access to the contractor's records, documents, agents, employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice determine the contractor's compliance with the requirements under paragraph (1).

(3) If the contract is for the procurement of supplies or materials to be used in a public works project, this section shall apply only if the contract for building materials is in excess of twenty thousand

1 dollars (\$20,000). A contractor shall not divide a contract into  
2 separate contracts to avoid the minimum financial threshold of  
3 this paragraph.

4 (b) (1) Any contractor contracting with the state who knew or  
5 should have known that the apparel, garments, corresponding  
6 accessories, equipment, materials, or supplies furnished to the state  
7 were laundered or produced in violation of the conditions specified  
8 in subdivision (a) when entering into a contract pursuant to  
9 subdivision (a), may, subject to subdivision (c), have any or all of  
10 the following sanctions imposed:

11 (A) The contract under which the prohibited apparel, garments,  
12 or corresponding accessories, equipment, materials, or supplies  
13 were laundered or provided may be voided at the option of the  
14 state agency to which the equipment, materials, or supplies were  
15 provided.

16 (B) The contractor may be assessed a penalty that shall be the  
17 greater of one thousand dollars (\$1,000) or an amount equaling  
18 20 percent of the value of the apparel, garments, corresponding  
19 accessories, equipment, materials, or supplies that the state agency  
20 demonstrates were produced in violation of the conditions specified  
21 in paragraph (1) of subdivision (a) and that were supplied to the  
22 state agency under the contract.

23 (C) The contractor may be removed from the bidder's list for a  
24 period not to exceed two years.

25 (2) Any moneys collected pursuant to this subdivision shall be  
26 deposited into the General Fund.

27 (c) (1) When imposing the sanctions described in subdivision  
28 (b), the contracting agency shall notify the contractor of the right  
29 to a hearing, if requested, within 15 days of the date of the notice.  
30 The hearing shall be before an administrative law judge of the  
31 Office of Administrative Hearings in accordance with the  
32 procedures specified in Chapter 5 (commencing with Section  
33 11500) of Part 1 of Division 3 of Title 2 of the Government Code.  
34 The administrative law judge shall take into consideration any  
35 measures the contractor has taken to ensure compliance with this  
36 section, and may waive any or all of the sanctions if it is determined  
37 that the contractor has acted in good faith.

38 (2) The agency shall be assessed the cost of the administrative  
39 hearing, unless the agency has prevailed in the hearing, in which  
40 case the contractor shall be assessed the cost of the hearing.

1 (d) (1) Any state agency that investigates a complaint against  
2 a contractor for violation of this section may limit its investigation  
3 to evaluating the information provided by the person or entity  
4 submitting the complaint and the information provided by the  
5 contractor.

6 (2) Whenever a contracting officer of the contracting agency  
7 has reason to believe that the contractor failed to comply with  
8 paragraph (1) of subdivision (a), the agency shall refer the matter  
9 for investigation to the head of the agency and, as the head of the  
10 agency determines appropriate, to either the Director of Industrial  
11 Relations or the Department of Justice.

12 (e) (1) For purposes of this section, “forced labor” shall have  
13 the same meaning as in Section 1307 of Title 19 of the United  
14 States Code.

15 (2) “Abusive forms of labor” means any of the following:

16 (A) All forms of slavery or practices similar to slavery, such as  
17 the sale and trafficking of ~~persons~~ *children or adults*, debt bondage,  
18 and serfdom and forced or compulsory labor, including forced or  
19 compulsory recruitment of ~~persons~~ *children or adults* for use in  
20 armed conflict.

21 (B) The use, procuring, or offering of a child for prostitution,  
22 for the production of pornography, or for pornographic  
23 performances.

24 (C) The use, procuring, or offering of a ~~person~~ *child or adult*  
25 for illicit activities, in particular for the production and trafficking  
26 of illicit drugs.

27 (D) All work or service exacted from or performed by any  
28 person under the age of 18 years either under the menace of any  
29 penalty for its nonperformance and for which the worker does not  
30 offer oneself voluntarily, or under a contract, the enforcement of  
31 which can be accomplished by process or penalties.

32 (E) All work or service exacted from or performed by a child  
33 in violation of all applicable laws of the country of manufacture  
34 governing the minimum age of employment, compulsory education,  
35 and occupational health and safety.

36 (3) “Exploitation of children in sweatshop labor” means all  
37 work or service exacted from or performed by any person under  
38 the age of 18 years in violation of more than one law of the country  
39 of manufacture governing wage and benefits, occupational health  
40 and safety, nondiscrimination, and freedom of association.

(4) “Sweatshop labor” means all work or service exacted from or performed by any person in violation of more than one law of the country of manufacture governing wages, employee benefits, occupational health, occupational safety, nondiscrimination, or freedom of association.

(5) “Apparel, garments, or corresponding accessories” includes, but is not limited to, uniforms.

(6) Notwithstanding any other provision of this section, “forced labor” and “convict labor” do not include work or services performed by an inmate or a person employed by the Prison Industry Authority.

(7) “State agency” means any state agency in this state.

(f) (1) On or before January 1, 2012, the Department of Industrial Relations shall establish a contractor responsibility program, including a Slave and Sweat Free Code of Conduct, to be signed by all bidders on state contracts and subcontracts. *The Department of Industrial Relations shall also maintain on its Internet Web site a link to the United States Department of Labor’s List of Goods Produced by Child Labor or Forced Labor.* Any state agency responsible for procurement shall ensure that the Slave and Sweat Free Code of Conduct is available for public review at least 30 calendar days between the dates of receipt and the final award of the contract. The Slave and Sweat Free Code of Conduct shall list the requirements that contractors are required to meet, as set forth in subdivision (g).

(2) Every contract entered into by any state agency for the procurement or laundering of apparel, garments, or corresponding accessories, or for the procurement of equipment or supplies, shall require that the contractor certify in accordance with the Slave and Sweat Free Code of Conduct that no apparel, garments, or corresponding accessories, or equipment, materials, or supplies, furnished to the state pursuant to the contract have been laundered or produced, in whole or in part, by *slave or sweatshop labor*.

(3) *The Department of Industrial Relations, in complying with this subdivision, shall also consider any feasible and cost-effective monitoring measures that will encourage compliance with the Slave and Sweat Free Code of Conduct.*

~~(3)~~

(4) To ensure public access and confidence, the Department of Industrial Relations shall ensure public awareness and access to

1 proposed contracts by postings on the Internet and through  
2 communication to advocates for garment workers, unions, and  
3 other interested parties. The appropriate agencies shall establish  
4 a mechanism for soliciting and reviewing any information  
5 indicating violations of the Slave and Sweat Free Code of Conduct  
6 by prospective or current bidders, contractors, or subcontractors.  
7 The agencies shall make their findings public when they reject  
8 allegations against bidding or contracting parties.

9 ~~(4)~~

10 (5) Contractors shall ensure that their subcontractors comply in  
11 writing with the Slave and Sweat Free Code of Conduct, under  
12 penalty of perjury. Contractors shall attach a copy of the Slave and  
13 Sweat Free Code of Conduct to the certification required by  
14 subdivision (a).

15 (g) No state agency may enter into a contract with any contractor  
16 unless the contractor meets the following requirements:

17 (1) Contractors and subcontractors in California shall comply  
18 with all appropriate state laws concerning wages, workplace safety,  
19 rights to association and assembly, and nondiscrimination standards  
20 as well as appropriate federal laws. Contractors based in other  
21 states in the United States shall comply with all appropriate laws  
22 of their states and appropriate federal laws. For contractors whose  
23 locations for manufacture or assembly are outside the United States,  
24 those contractors shall ensure that their subcontractors comply  
25 with the appropriate laws of countries where the facilities are  
26 located or international laws or treaties binding upon those  
27 countries.

28 (2) Contractors and subcontractors shall maintain a policy of  
29 not terminating any employee except for just cause, and employees  
30 shall have access to a mediator or to a mediation process to resolve  
31 certain workplace disputes that are not regulated by the National  
32 Labor Relations Board.

33 (3) Contractors and subcontractors shall ensure that workers  
34 are paid, at a minimum, wages and benefits in compliance with  
35 applicable local, state, and national laws of the jurisdiction in which  
36 the labor, on behalf of the contractor or subcontractor, is performed.  
37 Whenever a state agency expends funds for the procurement or  
38 laundering of apparel, garments, or corresponding accessories, or  
39 the procurement of equipment, materials, or supplies, other than  
40 procurement related to a public works contract, the applicable

1 labor standards established by the local jurisdiction through the  
2 exercise of either local police powers or local spending powers in  
3 which the labor, in compliance with the contract or purchase order  
4 for which the expenditure is made, is performed shall apply with  
5 regard to the contract or purchase order for which the expenditure  
6 is made, unless the applicable local standards are in conflict with,  
7 or are explicitly preempted by, state law. A state agency may not  
8 require, as a condition for the receipt of state funds or assistance,  
9 that a local jurisdiction refrain from applying the labor standards  
10 that are otherwise applicable to that local jurisdiction. The  
11 Department of Industrial Relations may, without incurring  
12 additional expenses, access information from any nonprofit  
13 organization, including, but not limited to, the World Bank, that  
14 gathers and disseminates data with respect to wages paid  
15 throughout the world, to allow the Department of Industrial  
16 Relations to determine whether contractors and subcontractors are  
17 compensating their employees at a level that enables those  
18 employees to live above the applicable poverty level.

19 (4) All contractors and subcontractors shall comply with the  
20 overtime laws and regulations of the country in which their  
21 employees are working.

22 (5) All overtime hours shall be worked voluntarily. Workers  
23 shall be compensated for overtime at either (A) the rate of  
24 compensation for regular hours of work, or (B) as legally required  
25 in the country of manufacture, whichever is greater.

26 (6) No person may be employed who is younger than the legal  
27 age for children to work in the country in which the facility is  
28 located. In no case may children under the age of 15 years be  
29 employed in the manufacturing process. Where the age for  
30 completing compulsory education is higher than the standard for  
31 the minimum age of employment, the age for completing education  
32 shall apply to this section.

33 (7) There may be no form of forced labor of any kind, including  
34 slave labor, prison labor, indentured labor, or bonded labor,  
35 including forced overtime hours.

36 (8) The work environment shall be safe and healthy and, at a  
37 minimum, be in compliance with relevant local, state, and national  
38 laws. If residential facilities are provided to workers, those facilities  
39 shall be safe and healthy as well.



1 (9) There may be no discrimination in hiring, salary, benefits,  
2 performance evaluation, discipline, promotion, retirement, or  
3 dismissal on the basis of age, sex, pregnancy, maternity leave  
4 status, marital status, race, nationality, country of origin, ethnic  
5 origin, disability, sexual orientation, gender identity, religion, or  
6 political opinion.

7 (10) No worker may be subjected to any physical, sexual,  
8 psychological, or verbal harassment or abuse, including corporal  
9 punishment, under any circumstances, including, but not limited  
10 to, retaliation for exercising his or her right to free speech and  
11 assembly.

12 (11) No worker may be forced to use contraceptives or take  
13 pregnancy tests. No worker may be exposed to chemicals, including  
14 glues and solvents, that endanger reproductive health.

15 (12) Contractors and bidders shall list the names and addresses  
16 of each subcontractor to be utilized in the performance of the  
17 contract, and list each manufacturing or other facility or operation  
18 of the contractor or subcontractor for performance of the contract.  
19 The list, which shall be maintained and updated to show any  
20 changes in subcontractors during the term of the contract, shall  
21 provide company names, owners or officers, addresses, telephone  
22 numbers, e-mail addresses, and the nature of the business  
23 association.

24 (h) Any person who certifies as true any material matter pursuant  
25 to this section that he or she knows to be false is guilty of a  
26 misdemeanor.

27 (i) The provisions of this section, as amended by Section 2 of  
28 Chapter 711 of the Statutes of 2003, shall be in addition to any  
29 other provisions that authorize the prosecution and enforcement  
30 of local labor laws and may not be interpreted to prohibit a local  
31 prosecutor from bringing a criminal or civil action against an  
32 individual or business that violates the provisions of this section.

33 (j) (1) The certification requirements set forth in subdivisions  
34 (a) and (f) do not apply to a credit card purchase of goods of two  
35 thousand five hundred dollars (\$2,500) or less.

36 (2) The total amount of exemption authorized herein shall not  
37 exceed seven thousand five hundred dollars (\$7,500) per year for  
38 each company from which a state agency is purchasing goods by  
39 credit card. It shall be the responsibility of each state agency to

1 monitor the use of this exemption and adhere to these restrictions  
2 on these purchases.

3 SEC. 2. No reimbursement is required by this act pursuant to  
4 Section 6 of Article XIII B of the California Constitution because  
5 the only costs that may be incurred by a local agency or school  
6 district will be incurred because this act creates a new crime or  
7 infraction, eliminates a crime or infraction, or changes the penalty  
8 for a crime or infraction, within the meaning of Section 17556 of  
9 the Government Code, or changes the definition of a crime within  
10 the meaning of Section 6 of Article XIII B of the California  
11 Constitution.